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U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: NEW DELHI, INDIA Date: SEP 26 2004

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, New Delhi, India, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of India who was found by a consular officer to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a United States citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her spouse.

The officer in charge (OIC) concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Interim District Director*, dated July 10, 2002.

On appeal, counsel asserts that the Immigration and Naturalization Service [now Citizenship and Immigration Services (CIS)] failed to properly weigh the evidence of extreme hardship to the qualifying relative of the applicant. *Form I-290B*, dated July 31, 2002.

In support of these assertions, counsel submits a brief, dated August 29, 2002; letters of support and a psychiatric report regarding the applicant's spouse. The entire record was considered in rendering this decision.

The record reflects that on or about February 1, 2000, the applicant was interviewed by a consular officer regarding her H-1B nonimmigrant visa petition filed by Mega Circuit, Inc. The application was submitted to the Anti-Fraud Unit for review and after an interview with the AFU, the applicant signed a statement indicating that documentation submitted in support of her petition was fraudulent.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

Counsel asserts that the applicant did not make a material misrepresentation in her visa application. *Applicant's Brief on Appeal*, dated August 29, 2002 ("Even if there was some discrepancy concerning her

previous employment as mentioned in her H-1B petition, is there justification to impose a life time bar ...?"). Counsel indicates that the applicant is "ignorant as to why ... the consular officer concluded that [redacted] was not truthful about her employment..." *Id.* Despite the assertions of counsel, the record reflects that the applicant was provided with ample opportunity to support her statements at the time she was interviewed by a consular officer and the Anti-Fraud Unit and was determined to have made material misrepresentations pursuant to section 212(a)(6)(C)(i) of the Act.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's spouse. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Counsel contends that the applicant's spouse would suffer extreme hardship if he relocates to India in order to remain with the applicant. Counsel states that the applicant's spouse would suffer as a result of separation from his parents who both reside in the United States and depend on the applicant's spouse for physical and psychological support. *Applicant's Brief on Appeal* at 3. Counsel asserts that the applicant's spouse enjoys lucrative, fulfilling employment in the United States and would be unable to advance his career similarly in India. Counsel indicates that relocation would result in a reduction in the success of the professional life of the applicant's spouse. *Id.* Counsel further states that if the applicant's spouse returns to India he will likely suffer financial hardship. *Id.* In addition, counsel provides letters of support evidencing that the applicant's spouse is an asset to his community, uses his computer programming abilities to help others and is of good moral character. *Letter from Chatur Patel,* dated August 20, 2002. *See also Letter from Ramesh M. Patel,* dated August 25, 2002.

Counsel fails to establish that the applicant's husband would suffer extreme hardship if he remains in the United States maintaining close proximity to his parents, his employment and financial well-being. The AAO notes that, as a U.S. citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Counsel contends that, if the applicant's spouse remains in the United States in the absence of the applicant, the applicant's husband would be forced to support himself and his parents in the United States while incurring expenses associated with travel and telephone calls to the applicant in India. *Id.* at 4. The record fails to establish that the applicant will be unable to secure employment in a location outside of the United States in order to contribute to her financial security. The

record fails to establish that the income of the applicant's spouse is insufficient to meet the identified expenditures imposed on him by the applicant's inadmissibility. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

Counsel further contends that the applicant's spouse suffers psychologically as a result of his separation from the applicant. Id. Counsel submits a report from a psychiatrist who evaluated the applicant's spouse. The report indicates that the applicant's spouse evidences symptoms meeting the criteria for depressive disorder. *Letter from Pravin J. Kansagra, MD*, dated August 15, 2002. The report indicates that the applicant's spouse was not benefiting from his prescribed medication and the evaluating psychiatrist therefore recommends that the applicant's spouse discuss alternative medications with his original psychiatrist and seek counseling. *Id.* The AAO notes that the record fails to establish an ongoing relationship between the applicant's spouse and a mental health professional. The AAO is unable to find extreme hardship to the applicant's spouse based on a psychiatric evaluation in the absence of additional evidence addressing the effectiveness of any and all medications and treatments prescribed.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The AAO recognizes that the applicant's spouse endures hardship as a result of separation from the applicant. However, his situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.